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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,235	05/14/2007	Ian Spence	12836-6	7646
757 7590 12/13/2010 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610				
EXAMINER				
DEUBLE, MARK A				
ART UNIT		PAPER NUMBER		
3651				
MAIL DATE		DELIVERY MODE		
12/13/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/573,235

**Applicant(s)**

SPENCE ET AL.

**Examiner**

MARK A. DEUBLE

**Art Unit**

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4, 5, 7, 9, 10, 13, 22, 23, 25, 26, 28, 59-62, 65, 66, 71, 73, 74, 78 and 82 is/are allowed.
- 6) ☒ Claim(s) 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-544)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

Continuation of Disposition of Claims: Claims pending in the application are 4,5,7,9,10,13,19,20,22,23,25,26,28,59-62,65,66,71,73,74,78 and 82.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Tincati (DE 199 03 319).

Tincati shows an adjustable star wheel that include a plurality of pockets distributed about the star wheel that rotate about a central axis. Each pocket is defined by two pairs of opposed, spaced apart fingers 4a/4b, with each pair being spaced from the other in the axial direction on a common shaft. Each finger is elongated radially and provides a contact surface that contacting a container when received in the pocket. The fingers of each pair are rotatably mounted on shafts located at an end of the fingers closest to the central axis so that they are rotatable opposite senses within respective ranges of movement and so that neighboring fingers from adjacent pockets are in a crossed configuration. Each shaft extends substantially parallel to the central axis located so that the fingers are rotatable within a range of movement to adjust the width of the pocket. A setting means operative to set the rotatable finger in substantially any position within the range of movement is formed by a toothed common drive means 8 that includes teeth on the fingers that that are rotably driven by the common drive means. The members 6 form a movable back plate operative to be moved substantially radially into and out

from the pocket. These back plates are moved by the common drive means 8. Thus Tincati shows all the structure required by claims 19-20.

The applicant's representative made no remarks regarding this rejection in the response of October 14, 2010, except to point out that claim 19 was amended to include the limitation of claim 1 and then asserts that it is now allowable. However, the claim which previously depended from claim 1 was rejected in the previous office action in its dependent form and is not allowable for the same reasons in independent form. As no substantive arguments were made, the rejection will not be further addressed.

*Allowable Subject Matter*

3. Claims 4-5, 7, 9-10, 13, 22-23, 25-26, 28, 59-62, 65-66, 71, 73-74, 78, and 82 are allowed.

*Conclusion*

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK A. DEUBLE whose telephone number is (571)272-6912. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark A. Deuble/  
Primary Examiner  
Art Unit 3651

md